

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AROR-ARK O'DIAH,

Plaintiff,

No. C 19-00816 WHA

v.

DISCOVER BANK a/k/a DISCOVER a/k/a DISCOVER
BANK CREDIT CARD, DISCOVER BANK CREDIT
CARD OPERATIONS MANAGERS, NEW YORK-
PRESBYTERIAN LOWER MANHATTAN HOSPITAL,
DR. COLLEEN McCARTHY, JASON AUSMUS,
SZEKUM TAM, ELLEN HAWA, WEILL CORNELL
MEDICINE a/k/a WEILL CORNELL INTERNAL
MEDICINE ASSOCIATES, NEW YORK MEDICAL
AND DIAGNOSTIC CENTER a/k/a ORTHO-NEURO-
MUSCULO-SKELETAL DIAGNOSTIC AND
TREATMENT CENTER, AND ALL CENTERS
PHYSICIANS AND MEDICAL DOCTORS, NEW
YORK CITY HUMAN RESOURCES
ADMINISTRATION, FLORENCE MERCER,
COMMISSIONER SAMUEL ROBERTS FOR THE
NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE, and SOCIAL SECURITY
ADMINISTRATION,

Defendants.

**ORDER ADOPTING
REPORT AND
RECOMMENDATION
TO DISMISS
COMPLAINT AND TO
TRANSFER SINGLE
CLAIM TO PROPER
VENUE**

INTRODUCTION

In this civil rights action, Magistrate Judge Elizabeth Laporte has filed a Report and Recommendation regarding plaintiff's *in forma pauperis* application and complaint. For the reasons below, the Report and Recommendation is **ADOPTED**, plaintiff's application to proceed

1 *in forma pauperis* is **GRANTED**, and all claims are **DISMISSED WITHOUT PREJUDICE** against
2 defendants, except for claims related to a Social Security disability decision dated December 14,
3 2018. Claims related to that decision will be **TRANSFERRED** to the proper venue, the Eastern
4 District of New York.

5 **STATEMENT**

6 On February 14, plaintiff Aror-Ark O'Diah, proceeding *pro se*, brought this action
7 against Discover Bank, Discover Bank Credit Card Operations Managers; New York-
8 Presbyterian Lower Manhattan Hospital, Dr. Colleen McCarthy, Jason Ausmus, Szekum Tam,
9 and Ellen Hawa; Weill Cornell Medicine; New York Medical and Diagnostic Center; New York
10 Human Resources Administration; Commissioners Samuel Roberts and Florence Mercer of the
11 New York State Office of Temporary and Disability Assistance; and the Social Security
12 Administration. This case was related to C 19-01854 by April 29 order of the undersigned
13 (Dkt. No. 18). That case named forty-six other defendants, included some overlapping
14 allegations to this complaint, and is dealt with in a separate order.

15 Here, plaintiff's complaint contains nearly 100 paragraphs alleging such wide-ranging
16 misconduct against him from improper calculations of his Social Security benefits to being set
17 on fire while he was in prison to being refused medical treatment due to his lack of health
18 insurance (Dkt. No. 1). In fourteen separate claims alleging violation of his constitutional rights
19 due to discrimination for his national origin or failure to provide timely government benefits,
20 plaintiff seeks \$50 million against each defendant, for \$1.2 billion in damages. Plaintiff also
21 filed a motion to proceed *in forma pauperis* (Dkt. No. 3).

22 On March 15, Magistrate Judge Elizabeth Laporte filed a report and recommendation
23 that: (1) granted plaintiff's application to proceed *in forma pauperis*; (2) recommended
24 dismissal of all claims without prejudice, except for plaintiff's claim relating to his appeal of the
25 Social Security Administrative Law Judge's decision that plaintiff's period of disability began
26 only as of September 2016, rather than June 2000 as plaintiff contends; and (3) recommended
27 transfer of the Social Security claim to the Eastern District of New York, which appears to be
28 the proper venue for plaintiff's social security appeal (Dkt. No. 9). Any objection to Judge

1 Laporte's report and recommendations was due within 14 days after being served with a copy.
2 Service was completed on March 15, 2019 (Dkt. No. 9-1). As of the date of this order, plaintiff
3 has not filed any objection.

4 ANALYSIS

5 For the reasons set forth in Magistrate Judge Laporte's Report and Recommendation,
6 plaintiff has failed to state any claims against defendants that are not frivolous (Dkt. No. 9).

7 In defining the meaning of "frivolous" under Section 1915(e)(2)(B), the United States
8 Supreme Court has held that the *in forma pauperis* statute gives judges "the unusual power to
9 pierce the veil of the complaint's factual allegations and dismiss those claims whose factual
10 contentions are clearly baseless . . . describing fantastic or delusional scenarios, claims with
11 which federal district judges are all too familiar." *Nietzke v. Williams*, 490 U.S. 319, 327
12 (1989). "A court is not bound, as it usually is when making a determination based solely on the
13 pleadings, to accept without question the truth of the plaintiff's allegations . . . [A] finding of
14 factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or
15 the wholly incredible, whether or not there are judicially noticeable facts available to contradict
16 them." *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

17 Plaintiff has two claims that need to be addressed in other forums. *First*, plaintiff claims
18 that he was denied relief from the New York City Human Resources Administration for welfare
19 assistance in 2014, in spite of an order, supposedly issued by an administrative law judge, that
20 benefits be given retroactively. If there is a legal basis for that claim, plaintiff needs to seek
21 relief in the proper jurisdiction. This court cannot enter the relief that plaintiff seeks against a
22 state agency for failure to pay welfare benefits. *Second*, plaintiff has filed his claim concerning
23 a Social Security disability decision in the wrong district. Plaintiff has two residences, one in
24 Oakland, California, and the other in Brooklyn, New York, evinced by documents attached to
25 his complaint (Dkt. No. 13-3). A complaint for judicial review of a Social Security decision
26 must be filed "in the district court of the United States for the judicial district in which the
27 plaintiff resides, or has his principal place of business, or, if he does not reside or have his
28 principal place of business within any such judicial district, in the United States District Court


1 for the District of Columbia.” 42 U.S.C. § 405(g). Generally, a Social Security case that is
2 improperly venued will be transferred to the proper court. *See Barrett-Barksdale v. Colvin*,
3 2014 WL 4929444 at *1 (E.D. Cal. Sept. 30, 2014).

4 CONCLUSION

5 The court has reviewed and hereby **ADOPTS IN FULL** Judge Laporte’s report and
6 recommendations. Accordingly, plaintiff’s claims against all defendants except for those
7 related specifically to his appeal of the Social Security administrative law judge’s decision
8 regarding his date of disability are **DISMISSED**. The clerk shall transfer this action to the United
9 States District Court for the Eastern District of New York. Plaintiff’s ex parte application re
10 issuance of summons and service of the complaint (Dkt. No. 13) shall be **HELD IN ABEYANCE**
11 and ruled on by the district to whom this case is transferred.

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13 **IT IS SO ORDERED.**

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15 Dated: May 7, 2019.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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